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September 29, 2021

Via ECF

MEMO ENDORSED

Honorable Katherine Failla
U.S. District Court
Southern District of New York
United States Courthouse
40 Foley Square
New York, NY 10007
Failla_NYSDChambers@nysd.uscourts.gov

RE: *ABKCO Music & Records, Inc., et al v. Coda Publishing, Ltd., et al*, Civil Action No. 1:19-cv-11892-KPF

Dear Judge Failla:

As the Court is aware, this Firm represents Defendants Robert Kirk Carruthers (“Mr. Carruthers”), Clare Ann Gambold Carruthers (“Mrs. Carruthers”), Gwilym Michael Davies (“Mr. Davies”), Coda Publishing Ltd. (“Coda”) and Vision Films, Ltd. (“Vision”) (collectively “Defendants”) in the above captioned matter. We write to request to file documents under seal related to Defendants’ Memorandum of Law in Support of Defendants’ Motion to Exclude the Expert Testimony of Barry M. Massarsky (ECF No. 107) (“Memorandum in Support of Motion to Exclude Expert Testimony”).

Specifically, Defendants request leave to file the Expert Report of Barry M. Massarsky (the “Massarsky Report”), Exhibit 1 to the Declaration of Daniel A. Schnapp in support of Defendants’ Motion to Exclude Expert Testimony, under seal, based on the parties’ agreement, the Protective Order entered in this case (ECF No. 55), and because the Massarsky Report contains sensitive, non-public information, including previously non-disclosed financial information concerning historical licenses of Plaintiff Abkco Music & Records, Inc. In addition, Plaintiffs have identified the information contained in the Massarsky Report as confidential. Accordingly, Defendants respectfully request Your Honor allow them to file the Massarsky Report under seal to protect the confidentiality of the referenced material.

Defendants’ requests are narrowly tailored and are meant to preserve and honor the confidentiality designations made by the parties in this case pursuant to the Protective Order, which are designed to protect sensitive non-public information related to the parties’ financial

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information. *See* ECF No. 55 at 2; *Oliver Wyman, Inc. v. Eielson*, 282 F. Supp. 3d 684, 706 (S.D.N.Y. 2017); *Rogers v. Bank of New York Mellon*, 09 CIV. 8551 (HBP), 2017 WL 4157376, at *1, n.1 (S.D.N.Y. Sept. 19, 2017) (noting the opinion was “filed in redacted form to protect confidential salary information”).

In accordance with Your Honor’s Rules, Defendants will file a sealed version of the aforementioned document under seal via ECF.

Accordingly, Defendants respectfully requests that the Court grant their requests to file the aforementioned document under seal.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Michael Barrie Kramer", enclosed in a light blue rectangular box.

~~Partner~~ Michael Barrie Kramer

Application GRANTED. Defendants may file the Expert Report of Barry M. Massarsky under seal, viewable by the Court and parties only.

The Clerk of Court is directed to terminate the motion at docket entry 107.

Dated: October 1, 2021
New York, New York

SO ORDERED.

A handwritten signature in blue ink, appearing to read "Katherine Polk Failla", written in a cursive style.

HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE